

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOANNE M. ROYER,)	
Plaintiff)	
)	
V.)	
)	
BLUE CROSS BLUE SHIELD)	
OF MASSACHUSETTS, INC.,)	CIVIL ACTION NO:
BLUE CROSS BLUE SHIELD)	<u>NO: 05-CV-10448-GAO</u>
LONG-TERM DISABILITY BENEFIT)	
PLAN, a/k/a OMNIBUS WELFARE)	
BENEFITS PLAN)	
KEMPER NATIONAL SERVICES, INC.,)	
BROADSPIRE SERVICES, INC., and)	
SHELDON MYERSON, MD.,)	
Defendants)	

OPPOSITION OF THE PLAINTIFF, JOANNE ROYER TO THE DEFENDANTS’
MOTIONS TO DISMISS COUNT III

Now comes the Plaintiff in the above entitled matter and in opposition to the Defendants’ Motion to Dismiss Count III of the Plaintiff’s Second Amended Complaint says as follows:

Until such time as certain minimal pre-trial discovery is accomplished and until such time as there has been the presentation of the “official,” Administrative Record upon which the review of this case may be based in whole or in part, it is sheer speculation as to which of the Defendants had which duties especially in that there is a combination of and cross-over of duties and responsibilities inasmuch as we are here dealing with both short-term disability benefits *and* long-term disability benefits.

Therefore, until the Administrative Record which is created, maintained, controlled and supplemented by the Defendants is actually produced by the Defendants to this court and to counsel for the Plaintiff, the within Motion To Dismiss Count III is on its face premature and should not be acted upon at this time or should be denied without prejudice.

Until then the facts are seriously in dispute and it is unfair to compel the Plaintiff to prepare an Opposing Memorandum without the full benefit of the “official” Administrative Record.

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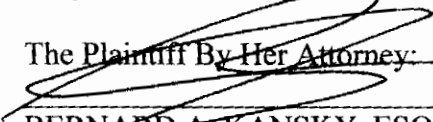
REQUEST FOR ORAL ARGUMENT

Counsel for the Plaintiff requests the opportunity to argue this matter orally and estimates that no more than 15 minutes should be required by undersigned counsel for same.

Waiver of ECF is hereby temporarily required and requested.

Dated: September 15, 2005

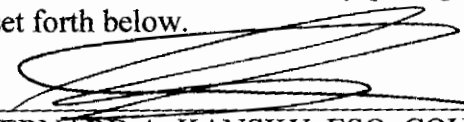
The Plaintiff By Her Attorney:


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon opposing counsel of record i.e. to wit: Edward S. Rooney, Jr. Esq., BBO No. 426840, Eckert Seamans Cherin & Mellott, LLC One International Place, 18th Floor, Boston, MA 02110, (617) 342-6800/ Fax (617) 342-6899; and to David F. Schmidt, Esq., Chittenden, Murday & Novotny, LLC., 303 West Madison Street, Suite # 1400, Chicago, IL 60606, (312) 281-3600/ Fax (312) 281-3678 by facsimile transmission and by postage prepaid first-class mail on the month, day and year set forth below.

Dated: September 15, 2005


BERNARD A. KANSKY, ESQ. COUNSEL FOR
THE PLAINTIFF, JOANNE M. ROYER